
**April 18, 2005**

**Noteworthy:**
"I'm not sympathetic to the thought that nominees of the president can be simply indefinitely put aside."

Senator Lugar, FOX New Sunday, 4/17/05

**Op-ed**
Majority Vote Should Trump Minority Rule by Senator Rick Santorum

**Press Release:**
**Chairman Lott: 'Senate Rules Are Crystal Clear: It Takes Only a Majority Vote to Change Them'**

**Myth vs. Fact**

Myth: Democrats' treatment of President Bush's nominees is analogous to Republicans treatment of President Clinton's nominees.

Fact: President Clinton's judicial nominees were not filibustered and never before has a judicial nominee with clear majority support been denied an up-or-down vote on the Senate floor by a filibuster.

"[Harry] Reid and company have used the Senate filibuster rule to permanently deny votes to nominees with clear majority support. That's never been done before." (David Reinhard, Op-Ed, "Judge Not Lest Ye Be … Filibustered," *The Oregonian*, 3/17/05)

- In 1994, when the Democrats controlled both the Senate and the executive branch, President Clinton confirmed a record number of federal judges. "President Clinton has gotten 129 federal judges confirmed by the Senate, more than any previous president during the first two years in office… 101 of his 129 judges were confirmed in 1994. That was the highest one-year total since Jimmy Carter won approval of 135 in 1979." (Michael J. Sniffen, "Clinton Outdoes Predecessors In Filing Judicial Vacancies," *The Associated Press*, 10/12/94)

During the 108th Congress (2003-2004), the Senate voted on 20 motions to invoke cloture and end debate on 10 different judicial nominees. The average vote to end debate was 53-43 – enough support to confirm each nominee but fewer than the 60 votes required to end debate. (CQ Vote #40: Motion Rejected 55-44: R 51-0; D 4-43; I 0-1, 3/6/03; CQ Vote #53: Motion Rejected 55-42: R 51-0; D 4-41; I 0-1, 3/13/03; CQ Vote #56: Motion Rejected 55-45: R 51-0; D 4-44; I 0-1, 3/18/03; CQ Vote #114: Motion Rejected 55-44: R 51-0; D 4-43; I 0-1, 4/2/03; CQ Vote #137: Motion Rejected 52-44: R 50-0; D 2-43; I 0-1, 5/1/03; CQ Vote #140: Motion Rejected 52-39: R 49-0; D 3-38; I 0-1, 5/5/03; CQ Vote #143: Motion Rejected 54-43: R 50-0; D 4-42; I 0-1, 5/8/03; CQ Vote #144: Motion Rejected 52-45: R 50-0; D 2-44; I 0-1, 5/8/03; CQ Vote #308: Motion Rejected 53-43: R 51-0; D 2-42; I 0-1, 7/29/03; CQ Vote #312: Motion Rejected 55-43: R 51-0; D 4-42; I 0-1, 7/30/03; CQ Vote #316: Motion Rejected 53-44: R 51-0; D 2-44; I 0-0, 7/31/03; CQ Vote #419: Motion Rejected 54-43: R 51-0; D 2-43; I 1-0, 10/30/03; CQ Vote #441: Motion Rejected 51-43: R 49-0; D 2-42; I 0-1, 11/6/03; CQ Vote #450: Motion Rejected 53-42: R 51-0; D 2-41; I 0-1, 11/14/03; CQ Vote #451: Motion Rejected 53-43: R 51-0; D 2-42; I 0-1, 11/14/03; CQ Vote #452: Motion Rejected 53-43: R 51-0; D 2-42; I 0-1, 11/14/03; CQ Vote #158: Motion Rejected 53-44: R 51-0; D 2-43; I 0-1, 7/20/04; CQ Vote #160: Motion Rejected 52-46: R 51-0; D 1-45; I 0-1, 7/22/04; CQ Vote #161: Motion Rejected 54-44: R 51-0; D 3-43; I 0-1, 7/22/04; CQ Vote #162: Motion Rejected 53-44: R 50-0; D 3-43; I 0-1, 7/22/04)

- Numerous Clinton nominees that were confirmed received less than 60 votes, and partisan filibusters kept none of these nominations off the bench (e.g., Judge Richard Paez, with 59-vote support; Judge William Fletcher, with 57-vote support; and Judge Susan Mollway, with 56-vote support). (Sen. John Cornyn, "President's Nominees Deserve Up-Or-Down Vote, Sen. Cornyn Says," Press Release, 2/14/05; CQ Vote #40, Confirmed 59-39; R 14-39; D 45-0, 3/9/00; CQ Vote #309, Confirmed 57-41; R 14-41; D 43-0, 10/8/98; CQ Vote #166, Confirmed 56-34; R 14-34; D 42-0, 6/22/98)

Majority Vote Should Trump Minority Rule

By Rick Santorum

Sunday, April 17, 2005; Page B07

It has been almost four years since President Bush nominated Texas Supreme Court Judge Priscilla Owen to the U.S. Court of Appeals for the 5th Circuit. Since then the Senate has held two hearings, conducted many days of floor debate, analyzed Owen's judicial opinions down to the last comma and attempted four times to invoke cloture so that debate could finally be concluded and the Senate could take an up-or-down vote on her nomination.

Not only has Owen withstood this intensive examination, she has shown time and again that the American Bar Association got it right when it unanimously awarded her its highest possible rating. She was also reelected with 84 percent of the vote in 2000 and had the endorsement of every newspaper in Texas. Owen has earned the support of a clear majority of senators.

She is not alone. This July will mark almost two years since the president nominated Justice Janice Rogers Brown to the U.S. Court of Appeals for the District of Columbia Circuit. Brown started life as the daughter of a sharecropper in the segregated South and through hard work and determination became the first African American woman to serve on California's highest court. In 2002 she was called upon

by her colleagues to write the majority opinion more often than any other member of the California Supreme Court. She was retained with 76 percent of the vote in her last election. In short, Brown has shown herself to be unquestionably trustworthy, highly intelligent and well within the mainstream, and she has earned the enthusiastic support of a majority of the U.S. Senate.

Yet, these two jurists still have not been confirmed because a collection of Democratic senators refuse to allow the Senate to conduct an up-or-down vote on their nominations.

The 108th Congress witnessed an unprecedented campaign of obstruction. Of the 52 men and women the president nominated to U.S. courts of appeals, the Democratic leadership carried out filibusters against 10 and threatened filibusters against six more. Never before had the minority leadership killed even one appeals court nomination by filibuster, much less 16. Bush has had a smaller percentage of his appeals court nominees confirmed than any president in memory.

The Democrats' judicial filibusters are extreme and an arrogation of power. Under the Constitution, the right to nominate judges belongs to the executive, not to the Senate minority leader. Yet the minority leadership has claimed a right to "veto" by filibuster any nominee who deviates from the minority's extreme, ideological litmus tests. The president can submit any nomination he likes, but he knows that even if a clear majority supports his nomination, the Democrats will "filibuster-veto" it. Further, the "advise and consent" function is in serious jeopardy if this new tactic of filibustering judges continues. The Democrats have made it all too clear that they are willing to let the Constitution's separation of powers fall by the wayside if that is what it takes to push through their agenda.

Indeed, Senate Democrats have gone so far as to threaten to shut down the Senate if they are not able to get their way. They have stood the Constitution on its head and endangered both separation of powers and checks and balances.

More troubling, the Democratic leadership has written the American people out of the Constitution's system for appointing judges. The people have only two methods for influencing the selection of federal
judges: their votes for president and their votes for senator. In November they rejected the presidential candidate who vowed to impose an ideological litmus test on all judicial nominees, and they chose the one who promised to appoint men and women who would uphold the law. They voted out the Senate minority leader who devised these destructive judicial filibusters and returned a Republican Senate with an enlarged majority. Senate Democrats, however, have opted to disrespect the people's voice and continue their audacious and constitutionally groundless claims for minority rule.

If a senator opposes a nominee, that senator should go to the Senate floor and explain why -- to the American people and the Senate. The senator should try to convince 50

colleagues that they ought to vote against the nominee. And when the nomination comes to a vote, the senator should vote no.

For over 200 years, that was how senators opposed nominees. The time has come for the Senate to reestablish that tradition, to end these destructive judicial filibusters and to give all judicial nominees the up-or-down vote they deserve.

The writer is a Republican senator from Pennsylvania and chairman of the Senate Republican Conference.

**Chairman Lott: 'Senate Rules Are Crystal Clear:**
**It Takes Only a Majority Vote to Change Them'**

– Lott cites Senate rules in advance of possible action to prohibit judicial filibusters –

WASHINGTON – Senator Trent Lott of Mississippi, chairman of the Senate Rules & Administration Committee, issued a statement Sunday "to set the record straight" that as a matter of history and of Senate rules, it takes only a simple majority of Senators to amend the rules.

Chairman Lott said he is concerned that Senate Democrats and some journalists are erroneously stating the vote threshold needed should the Senate move to change its rules on the confirmation of judicial nominations. Senate leaders are considering a rules change that would prohibit judicial nominations from being filibustered on the Senate floor.

"Senate rules are crystal clear: it takes only a majority vote to change them," Chairman Lott said. "The text of the Senate rules may be amended by a simple majority vote. Amending the text never requires more than that. Cloture on a rules text amendment requires two-thirds present and voting (Rule XXII, paragraph 2), but the two-thirds vote is not needed to amend the text itself."

Chairman Lott issued his statement after he appeared Sunday morning on ABC's "This Week," during which Senator Charles Schumer of New York incorrectly stated that a change in Senate rules requires a two-thirds vote of the Senate.